

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4963 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order ma : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHTT, HTTA, DOS, TT

Versus

STATE OF GUJARAT

Appearance:

MR K.S. JHAVERI for MR SK JHAVERI for Petitioners

MR V.M.PANCHOLI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1

MR MC BAROT for Respondent No. 2 - ABSENT

MR BHARAT J SHELAT for Respondent No. 3, 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 04/11/1999

ORAL JUDGEMENT

The petitioners seek a direction on the respondents Nos. 3 and 4 to pay up the amounts of subsidy which were not paid to these petitioners and others as per the order of the Taluka Development Officer

at Annexure "A" to the petition. A direction is also sought on the respondents Nos. 1 and 2 to take action against the respondents Nos. 3 and 4 under the Indian Penal Code for not having paid the amounts which were entrusted to them for payment to the petitioners and others.

2. According to the petitioners, they belong to Scheduled Tribes and under the scheme incorporated in the Government resolution dated 24th Sept. 1980, they were entitled to a subsidy of Rs. 1,000 each alongwith other persons of village Madanagadh. As per that scheme, the Taluka Development Officer, by his order dated 31st March, 1982, a copy of which is at annexure "A" to the petition, ordered payment of subsidy to 33 persons named in the annexure to this order at the rate of Rs. 1,000 each. It was stated in that order that the houses covered under the scheme were already constructed by these persons. The amount of Rs. 33,000/- which were payable to 33 persons named in the schedule annexed to the order was sent by cheque dated 31st March, 1982 to the Madanagadh Gram Panchayat, as stated in the order. It is thus, clear that the amount was required to be disbursed immediately after it was sent to the Panchayat by cheque dated 31st March, 1982, to the 33 persons named in the schedule to the order. The petitioners Nos. 1 and 2 are at serial Nos. 8 and 33, while the petitioners Nos. 3, 4 and 5 are at serial Nos. 9, 10 and 6 respectively of the said schedule of 33 persons annexed to the order of the Taluka Development Officer, Palanpur. According to the petitioners, they were also entitled to Rs. 250 each, by way of additional subsidies ordered to be paid by the Taluka Development Officer, but that amount was also not paid. According to the petitioners, the respondent being an influential person, no action was being taken against him despite several complaints which were made for non-payment, to the State Government and other authorities. One such representation was addressed on 22.6.1984, a copy of which is at annexure "B" to the petition. That was addressed to the District Development Officer and the District Panchayat. It was specifically stated that payments as required to be made under the order of the Taluka Development Officer out of Rs. 33,000 which were given to the Panchayat for disbursement, were actually not made and that forged signatures and thumb marks were created in the name of the persons who were required to be paid.

Nothing seems to have been done by the respondents Nos. 1 and 2 despite such serious allegations which were made. They have not even filed

any reply to the present petition.

In the affidavit-in-reply which has been filed by the respondent No.3, it is admitted that an amount of Rs. 33,000/- was sanctioned for payment to the persons who were named in the order of the TDO dated 31.3.1982. It is also admitted that the cheque given to the Panchayat for the purpose of disbursement was credited in the account of the Panchayat on 24.4.1982. It is then stated that the respondents Nos. 3 and 4, who were the Sarpanch and Talati-cum-Mantri respectively at the relevant time, asked the said 33 persons to collect their amounts. It is stated that the respondents Nos. 3 and 4 had made payment to 30 out of 33 persons, who remained present. The remaining 3 - namely, the petitioners Nos. 1, 2 and 4 were not given the payment for reasons mentioned in the affidavit. According to these respondents, the Gram Panchayat was directed by the TDO to make necessary arrangement with the merchants dealing in building materials to supply materials on credit and accordingly, the persons who had requested the Panchayat to recommend their case, were given the facility of getting the material for construction on credit on the recommendation of the Panchayat. The petitioners Nos. 1 and 2 had taken building material of timber and roof-tiles from one Kalidas and utilised the same. They however, did not agree to make the payment for the said material when they were called upon to accept the sum of Rs. 1,000 which was required to be paid by the respondent No.3 to them. It was stated that there was an arrangement between the respondent No.3 and these petitioners that if they had taken material on credit, the payment to the merchant should be made first from the instalment of Rs. 1,000/-. These petitioners however, refused to co-operate and did not accept the amount for making such payment. It is stated that the petitioners Nos. 1 and 2 were not paid Rs. 1,000/- because they refused to adjust that payment against the dues of the merchant. It is further stated that the petitioner No.4 did not complete the construction and he was not paid the amount of Rs. 1,000/- for the same reason. It is reiterated that out of the five petitioners, the petitioners Nos. 1, 2 and 4 did not accept Rs. 1,000 because they refused to adjust the same against the payment to the merchant from whom they had borrowed the building material. It is difficult to accept the excuse put forth by the respondents Nos. 3 and 4 for non-payment of the amount which were required to be paid to the persons named in the order of the TDO including these petitioners. There was no stipulation in the order that the amounts which were to be paid to the petitioners could be adjusted for making payment of the

dues of merchants from whom they purchased material for constructing their houses. No such stipulation could have been imposed by the respondents Nos. 3 and 4. All the persons named in the order of the TDO were entitled to get the amount of subsidy of Rs. 1,000/- which was sanctioned for them. It was clearly recorded in the order of the TDO that all the 33 houses were already constructed and therefore, these 33 persons were entitled to get the said amount of subsidy. Therefore, the stand taken up in the affidavit is wholly unjustified and the persons who have not been paid are entitled to the payment of the amount of subsidy, notwithstanding the question of their dues, if any, payable to any merchant from whom they may have purchased the building material.

It appears that the State Government and the District Panchayat have not perceived the tip of the ice-berg. The payment was clearly intended to be made swiftly by the Panchayat. It is not clear as to on what date the payment was in fact made to 30 persons, if at all it was really made. In order to ensure that the amounts intended to help such persons reach them, the higher authorities must monitor and check-up whether the payments were in fact made, as ordered, to the concerned persons and as to when they were made. It should also be verified whether any condition could have been imposed, of adjusting the payments meant for such persons towards the dues of merchants from whom they may have purchased the building material used for construction. Neither the scheme, nor the order made therein warranted any such condition. The respondents Nos. 1 and 2 are therefore, directed to ensure that the payment of subsidy is made by the Panchayat to the petitioners who may not have been paid the amounts so far and also to verify as to whether and if so, when were the payments made to others whose names are mentioned in the order of the TDO dated 31.3.1982. They should also verify as to whether, and if so when, the payment of the additional subsidy of Rs. 250 was made and if the amounts were not given to the petitioners, it should be ensured that they should be given. The respondents Nos. 1 and 2 will make a suitable enquiry in the matter and if any default or offence is noticed to have been committed by any person in the matter of disbursement of the amounts payable under the scheme to the persons mentioned in the order of the TDO dated 31.3.1982, they shall take immediate action against the defaulters and or the offenders including launching prosecution in accordance with law. The respondents Nos. 1 and 2 are directed to place a report of the steps that they may take pursuant to this order on the record of this petition. Rule is made absolute

accordingly with no order as to costs.
